

The Leesburg Planning Commission met on Thursday, November 17, 2005 in the Council Chambers, 25 West Market Street, Leesburg, Virginia. Staff members present were Susan Swift, Wade Burkholder, Brian Boucher, Bill Ackman, Barbara Beach and Linda DeFranco

CALL TO ORDER

The meeting was called to order at 7:00pm by Chairman Wright

PLEDGE OF ALLEGIANCE AND ROLL CALL

Present: Chairman Wright
Commissioner Bangert
Commissioner Barnes
Commissioner Burk
Commissioners Hoovler
Commissioner Kalriess
Commissioner Moore
Mayor Umstattd

ADOPTION OF AGENDA

Commissioner Bangert moved to adopt the agenda as presented.

Motion: Bangert
Second: Hoovler
Carried: 7-0

APPROVAL OF MINUTES

Commissioner Hoovler moved to adopt the minutes of the November 3, 2005 meeting.

Motion: Hoovler
Second: Burk
Carried: 6-0-1

Commissioner Bangert abstained from this vote.

CHAIRMAN'S STATEMENT

Chairman Wright reviewed tonight's agenda which considers the rezoning on S. Harrison Street. He then recapped the remaining agenda.

PETITIONERS

None

PUBLIC HEARING

None

ZONING

TLZM 2005-0001 – rezoning of 11.65 acres from B-1 and B-2 to PRN East side of Harrison Street and south of the W&OD Trail north of Catoctin Circle. Wade Burkholder gave the staff presentation pointing out the revised concept plan and the proffer statement. He pointed out that there was a mislabeling of building E-1. He also pointed out the 15' buffer with a wall along the boundary with Seneca Auto Body does not extend the entire length of the section as might be indicated in the cross-section. With regard to the proffer statement, proffer 2.2.2 (page 2) with reference to the traffic signal at S. Harrison Street and Loudoun Street, all the language regarding “warrant studies” has been removed. It has been determined that the signal is needed now. Proffer 4.2 (page 5) the six foot masonry or wood wall along lots I, J, K, and L now reads a six foot high solid fence.

Commissioner Barnes questioned what material a six foot high solid fence would be. Mr. Burkholder said it could be wood or masonry. Mr. Barnes asked for a clarification from the applicant regarding their intentions for this structure.

Mayor Umstattd questioned why “k” was not part of the November 9 proffer statement. Mr. Burkholder said the November 9 statement was a result of the public hearing. The Mayor went on to ask if there was any concern about the removal of “k”. Mr. Burkholder responded that there will be more landscaping because this is the entryway to the application and he saw no problem with it.

Proffer 4.3 regarding decibel level, the staff asked that the applicant remove the last statement since it was unclear. The statement reads “This mitigation shall mitigate noise levels at the property boundary that do not exceed the noise levels permitted for the B-2 district at the property boundary”. Lastly, the applicant is still proffering \$6K per unit as their one time cash contribution, rather than what the town stipulates at \$7,765.

Chairman Wright wanted clarification on the school proffer and the edit on 4.3. He then asked the applicant to come forward and address the material of the wall. Marty Mitchell said their intent was to make the language “wall/fence”. They would like to have the option of the type of fence they will construct. He said that they will stay within the guidelines of the historic district. Mr. Barnes felt that the wood would be time limited, and he would like to see it remain a brick wall. Chairman Wright asked that the applicant point out the location of the fence. Mr. Mitchell indicated the area by Banner Glass and Seneca Auto Body.

Commissioner Barnes asked about the cost of road improvements for this area. Mr. Mitchell said there would be a set amount and the town could use it at their discretion.

Chris Gloeckner said that \$6K would be proffered. This is as a result of studies they performed. The applicant feels that the town plan overstated the needs of the area because they did not differentiate between infill and redevelopment over new development on the perimeter of town.

Mr. Barnes again questioned the proffer amount per residence. He feels that the schools will not reap any gains if the amount proffered goes into roads.

Barbara Beach, Town Attorney, said that proffers are optional and we cannot ask for more. The only option the Commission has is to deny the application.

Commissioner Hoovler agrees with the applicant regarding the formula of infill vs. new development. He does not feel that this area will create much impact on schools. He went on to ask what the town's obligation is to the County? Are they expecting us to apply the formula? Susan Swift said they have not yet experienced this, but she is sure it will be a pass through. Brett Burk asked if it was based on actual students and not number of units. Ms. Swift said it was a rather complicated formula, but it would be based on the number of students generated.

Commissioner Bangert said just because the town is not responsible, everyone as a taxpayer is obligated.

Commissioner Moore, asked if we receive \$6K per unit, how much can be allocated toward road improvements.

Barbara Beach once again addressed proffers. They cannot be mandated. Currently all amounts are averaged, not actual. There is no legal obligation for the town to pay the county anything. Applicants offer these items as an incentive to help offset the costs to the town for the infrastructure improvements or development. She once again reiterated that proffers are voluntary. Susan Swift added that the Commission could make a recommendation to Council on how they would like to see the proffer money divided.

Commissioner Kalriess asked the applicant what the value of the cost of the H-1 is to the development? How much will they need to spend over and above any other development outside the H-1. Randy Minchew said they have not arrived at any figure to date. Lee Quill responded that they will need to raise the quality of material to a higher, more costly standard.

Commissioner Bangert commented on the proffers. She mentioned that the proffer guidelines for the town are not as stringent as they are in the county. Without meeting the established guidelines, then the rest of the town and county taxpayers will pick up the tab. Ms. Bangert mentioned that this was a great project, but asked that they reconsider the amount per dwelling that they offer.

Commissioner Moore mentioned that because of the cost of the H-1, he feels that they will be selling those units at a higher price to pick up some of the cost differential.

Chairman Wright regarding proffer 4.3, does the applicant have a comment about striking the last sentence? Marty Mitchell said they felt they might be held liable to mitigate illegal noise operation. If they fall within the guidelines, then there would be no problem. They will only provide the noise mitigation required for residential units. Mr. Wright asked where the level would be before there is any compliance? Brian Boucher came forward to say if there is an operation that goes over noise levels, it would be the responsibility of that operation to mitigate the noise. Mr. Wright asked if there were any enforcement problems? Mr. Boucher said so far there have been no problems because there have been no complaints.

Susan Swift said they are being asked to mitigate noise during development, so there will be enforcement within the area. She does not have a problem with the language in the proffer.

Chris Gloeckner clarified their reasoning for the proffers as follows: 1) They filed their application in March, the school proffer amount was voted on in July; 2) the type of residential development being proposed is not geared for families with children; and 3) the way the town policy is written is that the proffer is due on the difference on the rezoning and what could be built under the B-2, the analysis showed they are paying full freight on 245 dwelling units out of 352, leaving 107 which could be built under the existing zoning. They could allocate \$200K for transportation reducing the per unit proffer to \$5430.00 to be put toward school costs, etc.

Commissioner Kalriess commented that this is the type of development we have asked for. The town plan and the Crescent District Master Plan ask for this type of infill. The intrinsic value is greatly enhanced by going under H-1, and they asked for this. He would like to propose the Planning Commission give consideration to transportation improvements versus the school costs.

Commissioner Barnes questioned the amount per unit being proffered, Ms. Gloeckner once again reiterated her prior statement for the formula on the proffers offered. Rob Mitchell said they looked at the office of policy development and research for HUD, their proffered guidelines are based on multi-family units as a whole, not what they are planning for this particular area. Commissioner Barnes asked if they could block a section for 55 and older. Mr. Mitchell said they don't want to shrink their market at this point. Mr. Barnes is concerned, as is Ms. Bangert, regarding how much the citizens will have to pick up as a result of the shortfall in proffers.

Commissioner Bangert then stated if they don't stand by the guidelines, then what kind of precedent are they setting. They need to treat everyone planning for redevelopment in the Crescent District equally.

Commissioner Burk said he agrees with the concern about setting precedent. However, a guideline and an average may or may not be applicable. He feels this application will draw a lower number of children than the average indicates. He feels that applying a guideline that came in after the application exudes a level of unfairness.

Commissioner Moore agreed that this will be a good benefit to the town. He has concerns about the \$6K number per unit. Can the applicant proffer more if there is a larger number of children. Randy Minchew said a similar thing happened in Falls Church and they were found to be in violation of the Fair Housing Act. Therefore, this would not be feasible.

Chairman Wright also agreed with Commissioner Bangert's point regarding the cost distribution past the town and the county. He then asked what the numbers were. The response was 1 bedroom – 32%; 2 bedroom – 57% and 3 bedroom – 11% out of 262 units. Mr. Wright said the applicant had the option of not seeking the H-1 designation. Future sites will be in the H-1 or the Crescent District so they will have guidelines they must follow.

Commissioner Moore moved to deny TLZM 2005-0001.

Motion: Moore
Second: Bangert

Commissioner Wright stated he would like to see this application approved, even if there are still some outstanding proffer issues

Commissioner Hoovler said this was a very tight application and this is the kind of development the town is seeking. This could be a signature development. He agrees with the proffer guidelines, but feels that there needs to be some flexibility since this is an infill application. He went on to suggest that there be another type of guideline for the Crescent District over new development. He does not support the motion.

Commissioner Kalriess said denial would send the wrong message about how they want to do business within the town.

Commissioner Moore said the difference in what the guidelines say and what is being proffered is an amount that is somewhat insignificant.

Those in favor of denial of TLZM 2005-0001 – 3; those opposed – 4.

Commissioner Kalriess moved to approve TLZM 2005-0001, with the proffers as written.

Motion: Kalriess
Second: Hoovler
Carried: 4-3

SUBDIVISION AND LAND DEVELOPMENT

None

COMPREHENSIVE PLANNING

None

COUNCIL AND REPRESENTATIVES REPORT

Mayor Umstattd said to date they had not received any comment from the County on joint UGA/JLMA issues.

STAFF AND COMMITTEE REPORTS

Commissioner Moore talked about the Environmental Advisory Commission meeting and their desire to incorporate green building standards.

Commissioner Hoovler attended the Economic Development Committee meeting. Tripp Muldrow presented the town's branding strategy. He said the business leaders were very anxious to see this follow through. They also discussed the Harrison Park project and were quite excited about the concept and had some questions regarding business strategy. They would like to meet with Mitchell and Best regarding this. The EDC should be part of the public hearing with the Town Council regarding the Harrison Park project and any other Crescent District redevelopment applications.

OLD BUSINESS

With regard to the rules amendment, Commissioner Bangert liked the attorney's language. She would like to see this language adopted.

Commissioner Moore asked if there is a proffer amount below the threshold established and it is modified between the public hearing and the vote to increase it to the requested level, do they accept this? Barbara Beach said that after the public hearing, if it is responsive to something requested by a citizen or staff, it is eligible for review.

Commissioner Hoovler also agreed with the new language and requested that it be approved

Commissioner Wright said there are times when the common sense rule prevails and if changes are reasonable and made within a reasonable amount of time.

Commissioner Bangert moved to accept the changes for Section 2.5 as written by Barbara Beach as follows and to add the phrase "a redlined version".

Section 2.5. Materials Submission Deadline

The deadline for the submission of any amendments or changes to an application shall be fourteen (14) days prior to the Planning Commission public hearing on the item. After the deadline has passed, an applicant shall be required to request a continuance for the

purpose of consideration of any amendments or changes to the application. Following the public hearing, and applicant shall be permitted to make changes or amendments only in response to Commission, staff or citizen comments made at the public hearing. Said changes must be submitted in redline form no later than 7 days prior to the Commission vote to be considered by the Commission.

Motion: Bangert

Second: Burk

Carried: 6-0

Commissioner Moore was absent for the vote.

Chairman Wright stated that there was a question regarding the second meeting in December. The Council is taking this off, does the Commission want to take their second meeting off also? Susan Swift said the only thing scheduled would be the copy of the Crescent District Master Plan, however they would not receive this in time to review it. The Commission decided to cancel the second meeting in December, the 15th.

With regard to the Retreat, choices were Saturday, January 21st or February 4th. The Commission decided on Saturday, February 4th at 10:00am. Points of discussion will be the rules and regulations, town plan action programs, Commissioner Hoovler recommended a Town Plan health check and a staff calendar of the “laundry list” and other items that need commission attention.

NEW BUSINESS

Commissioner Hoovler mentioned the economic development impact of the revised KSI application. Betsey Fields recommended that the Council authorize the staff for impact studies on funding of the Route 7 to help achieve what the town wants to see along there in the future. Many times the Commission reacts to proposed development rather than really get a vision of what they want. Something should be done to make the entire process easier and less drawn out.

Mayor Umstattd responded by saying the proposal makes sense. This is what is done when the Comprehensive Plan is amended. This area has been designated as a premier office corridor, however, developers argue that pure office parks are no longer desirable. This could change in the future, so it is hard to plan according to market trends.

Commissioner Kalriess said there was a concept of sectors in the Town Plan. The idea of developing sectors was so they could go back and see how the development trend is going. Commissioner Hoovler added that perhaps they can plan with the developers and work things out right in the beginning. The Crescent District is an example of how this can happen. Susan Swift said the challenge is in the pressure of proposals. It would be difficult to get a master plan far enough ahead in this area. Mr. Hoovler added that there needs to be more input from the EDC.

Commissioner Kalriess brought up the UGA/JLMA subcommittee action. They need to meet again and one item is to get the town plan brought to the attention of the Board of Supervisors. Chairman Wright said they do need to open up the dialog again, currently there is a lull in the communication. He said that he will contact Mr. Elgin.

Commissioner Hoovler added that the committee is in favor of hearing about the town plan. Commissioner Bangert added that county staff is not available to assist the county subcommittee. They are finishing the PUGAMP and once that is finished, Leesburg should be next. Susan Swift said this does give them an opportunity to further research some issues. The Crosstrails and Creekside items need discussion since they will be resubmitted soon to the County. She asked if the Commission wanted to discuss this as a subcommittee or the entire Commission prior to a regular meeting, or a separate meeting. Commissioner Kalriess asked if Mr. Wells conducted an economic study on the UGA. Mayor Umstattd said this was done a few years ago, but is not aware that a current one is underway. To redo this would cost around a quarter of a million dollars and Council has not opted to allocate funds at this time. Susan Swift said she thought they might be putting some economic information together on the Peterson tract. Commissioner Kalriess said this was discussed in committee and he thought there was a question regarding the possibility of annexation and the financial impact.

Commissioner Bangert said relying on an economic study is not viable because often the application is changed so drastically that the varying levels of revenue are difficult to pinpoint. Commissioner Kalriess said that failing to plan is risky. There needs to be some parameter based upon what is in the Town Plan for the area and the variables coming in. Chairman Wright said they should take a look at this after the next Commission meeting. This would be for the subcommittee and other members of the Commission if they choose to stay. He also mentioned at the PC level, the goal is to look at the joint planning, to look at the projects with the County's Commission. There is a question of BLA, annexation, etc. He feels they should stay away from that debate and stick with the land use issues. They agreed they would meet at the end of the next meeting.

Commissioner Bangert proposed that the commission have a worksession with Council soon to discuss the proffer policy. There should be other things such as parks and rec, libraries, etc. included in proffers. Susan Swift said there is not formula in place because the town does not have the data for the cost of services. Hopefully, once the integrated management system is in place, they will be able to gather data. The town cannot plug into the county formula.

Barbara Beach mentioned the KSI proffers. Philosophically they need to determine the arenas they would like funds proffered to. There is nothing in place currently to review or handle funds targeted to certain segments. This needs to happen prior to the Commission seeing the application. This requires a wish list and a mechanism to handle the funds.

Commissioner Bangert said at the county level she has never seen applicants not propose proffers in accordance with guidelines. There should not be an argument over the dollars.

Commissioner Kalriess commented that this needs to be discussed, tax dollars and proffer dollars compared to cost of services. Commissioner Barnes commented that when the Commission is excited about a project, the applicant backs off on additional proffers. Chairman Wright asked staff to follow up on getting together with Council to discuss the proffer policy. The retreat will be a good forum to begin discussion with Commissioners.

ADJOURNMENT

The motion was made to adjourn at 9:15pm.

Prepared by:

Approved by:

Linda DeFranco, Commission Clerk

Kevin Wright, Chairman